



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Montana State Office

5001 Southgate Drive

Billings, Montana 59101-4669

<http://www.blm.gov/mt>

August 13, 2009



In Reply Refer To:

MTM 99271

(MT92220.TB)

Mr. James D. Leach

Global Perspectives Engineering Services

P.O. Box 2859

Alameda, California 94501-2859

Dear Mr. Leach:

This letter is in response to your concerns, as a private surface owner, regarding parcel 08-09-12 listed on our November 3, 2009, Notice of Competitive Oil and Gas Sale. Via email on August 4, 2009, Teri Bakken provided you with original patent information confirming that the minerals are owned by the Federal government. A copy of the patent document is enclosed.

In your response email, you requested additional information regarding the Act of December 29, 1916. This Act is commonly referred to as the Stockraising Homestead Act. The provisions of the Act allowed for an entryperson to make application for up to 640 acres of land that had been designated as "stock-raising lands." In order for lands to be designated as stock-raising, the surface had been determined to be chiefly valuable for grazing and raising forage crops, did not contain merchantable timber, and was not susceptible of irrigation from any known source of water supply. Section 9 of the Act specifically states:

"That all entries made and patents issued under the provisions of this Act shall be subject to and contain a reservation to the United States of all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and removed the same."

We have enclosed a copy of the Act for your reference.

In response to the concerns you raised in your letter and email regarding the surface use of your land, when the Bureau of Land Management (BLM) receives lease nominations, we determine what stipulations should be placed on each parcel based on the applicable resource management plan (RMP). These stipulations are noted in the sale notice you were mailed. Stipulations restrict activity on the surface, the time the activity can take place, or both. In this instance, we have applied a timing limitation to a portion of the parcel because of crucial wildlife winter range; surface use is prohibited between December 1 and March 31. We have also applied a "no surface occupancy stipulation (NSO)" to another portion of the parcel to protect riparian areas; this will protect those important surface resources and force a company to drill directionally from another location. The cultural resource lease stipulation has also been applied to the entire parcel. The BLM will not approve any ground disturbing activities that may affect historic

properties until it completes its obligations under the applicable requirements of the National Historic Preservation Act.

After a parcel is reviewed for stipulations, it is offered for sale at a competitive oil and gas sale. If the parcel is bid upon, a lease is issued for a 10-year term, subject to the stipulations applied. If the parcel is not bid upon at the sale, it is available for noncompetitive leasing for a 2-year period after the sale, which is also a 10-year term. If there is any development of oil/gas on the parcel in question, the lessee/operator must negotiate for permission to gain access with the surface owners. Also, prior to approval of any applications for permit to drill within the parcel, we would:

- require the lessee/operator to certify that a good faith effort has been made to negotiate a surface use agreement with the surface owners;
- invite the surface owners to participate in the pre-drilling onsite inspection/meeting, and seek the surface owner's input on development and reclamation issues, and;
- carefully consider the surface owner's views and the effects on the surface owner's uses of the land before determining mitigation requirements and approving operations.

You also indicate a concern that the lands are under the Federal CRP Program. This, in and of itself, does not prohibit oil and gas leasing activities. Any surface disturbance to the vegetative resources will be reclaimed in accordance with Federal Onshore Oil and Gas Order Number 1, which governs approval of federal oil and gas drilling permits. If an oil and gas lease is issued, we will attach a "Notice to Lessee" to the lease advising that all or a portion of the lands may be within a CRP contract area.

The BLM appreciates your concern for resources on your surface. In your correspondence, you make general remarks about environmental impacts of developing oil and gas and suggest that the government should be protecting land from development rather than encouraging the burning of fossil fuels. However, you have not provided any detailed justification for the BLM to consider these concerns. The BLM believes that the terms and special lease stipulations that are applied to the lease are sufficient to protect environmental values.

Decision: For the reasons stated above, your protest is dismissed. This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4 (Enclosure 4) and the enclosed Form 1842-1 (Enclosure 3). If an appeal is taken, the Notice of Appeal must be filed in the Montana State Office at the above address within 30 days from receipt of this Decision. The appellant has the burden of showing that the decision appealed from is in error. If you wish to file a petition for a stay pursuant to 43 CFR Part 4, Subpart B § 4.21, during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay must show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success on the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.

Copies of the Notice of Appeal, Petition for Stay, and any statement of reasons, written arguments or briefs must also be submitted to the Office of the Solicitor at the address shown on Form 1842-1 at the same time the original documents are filed in this office.

If we receive an offer to lease the protested parcel at the sale or after the sale and issue the lease, we will notify you of the identity of the lessee. In case of appeal, the lessee must also be served.

/s/ Gene R. Terland

Gene R. Terland
State Director

Enclosures

- 1-Patent (1 pp)
- 2-Act of December 29, 1916 (3 pp)
- 3-Form 1842-1 (1 p)
- 4-43 CFR 4.21(a) (1 p)

cc: (w/encls.) Miles City Field Office

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